

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 202003749	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 11:30 PM	Location of Incident: Atlantic Avenue and 4th Avenue	Precinct: 84	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 1:15 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/01/2020 1:15 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B. An officer	Force: An officer used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

## Case Summary

On June 1, 2020, complainant/victim § 87(2)(b) filed the following complaint via the CCRB's website.

On May 31, 2020, at approximately 11:30 PM, § 87(2)(b) was in the vicinity of the Barclays Center in Brooklyn and attending a protest rally against police brutality. While there, § 87(2)(b) happened to observe the arrest of two individuals at the intersection of Fourth Avenue and Atlantic Avenue. § 87(2)(b) approached them and began video recording the scene on his cell phone. As he did so, an unidentified officer approached him from behind and told him to "get the fuck out of here" and "go to the sidewalk." (**Allegation A: Discourtesy** – § 87(2)(g)) The officer then pushed § 87(2)(b) three times, causing him to stumble backwards without falling (**Allegation B: Force** – § 87(2)(g)). § 87(2)(b) complied and retreated to the sidewalk across the street. § 87(2)(b) had no further interactions with the officer and was not summonsed or arrested.

The NYPD found no body-worn camera (BWC) footage of the encounter (Board Review 03, 05). While § 87(2)(b) stated that he was able to capture the subject officer in his cell phone recording, he ultimately failed to provide this video footage to the investigation.

## Findings and Recommendations

**Allegation (A) Discourtesy – Word: An officer spoke discourteously to § 87(2)(b)**

**Allegation (B) Force – Physical Force: An officer used physical force against § 87(2)(b)**

## Known Facts and General Descriptions

§ 87(2)(b) was interviewed by telephone on June 4, 2020 (Board Review 02).

§ 87(2)(b) stated that on the night of May 31, 2020, he was in the vicinity of the Barclays Center in Brooklyn, where many protestors had gathered to hold a demonstration against police brutality. § 87(2)(b) was there to video-document the event with his cell phone camera and had no contact with officers - who were grouped in line formations throughout the area - for most of the night.

At approximately 11:30 PM, at the intersection of Fourth Avenue and Atlantic Avenue, § 87(2)(b) noticed two handcuffed individuals in police custody. To record the scene from a closer distance, § 87(2)(b) approached their position on the center median dividing Fourth Avenue and began video recording. None of the officers in the surrounding area said anything to him. But soon after § 87(2)(b) began recording, an officer approached him from the rear and told him to "get the fuck out of here" and "go to the sidewalk." Before he could react, the officer pushed § 87(2)(b) from behind. As he stumbled and turned, § 87(2)(b) was confronted by a blue-uniformed white male who proceeded to push him twice more. § 87(2)(b) in turn complied with the order and retreated to the sidewalk across the street. He had no further interactions with the officer, was not summonsed or arrested, and sustained no injuries.

During his interview, § 87(2)(b) stated he had continued recording when the officer pushed him, that he had since reviewed the video, and that the footage showed the subject officer and showed the name "Delaney" on the officer's shield, along with (what he recognized as) the insignia of a Sergeant's chevrons on his sleeves. § 87(2)(b) described the officer as an approximately 5'10" tall, 170 pound blue-uniformed white male with red hair, a red mustache, and a red beard. In his initial online complaint, § 87(2)(b) stated that he believed the subject officer was assigned to the

“16<sup>th</sup> Precinct” (There is no NYPD Precinct with this designation).

§ 87(2)(b) agreed to share his video recording with the investigation and confirmed receipt of the transmitted upload link soon after the interview. However, § 87(2)(b) never uploaded the video and failed to respond to numerous subsequent contact attempts by phone and email over an extended period of time.

### **Body-Worn Camera Footage**

The investigation submitted two separate requests to the NYPD's Legal Bureau for body-worn camera (BWC) footage pertaining to the incident. The first request (Board Review 03), which noted the incident date, time, and location of occurrence, yielded negative results (search parameters included specialized commands such as Strategic Resource Group (SRG)). Subsequently, the investigation identified all male members of service named “Delaney” below the rank of Lieutenant, which yielded a list of seven individuals per the NYPD’s active duty roster (Board Review 04): Sgt. Peter Delaney, Sgt. Jared Delaney, PO Robert Delaney (061 PCT), PO Robert Delaney (075 PCT), Det. Michael Delaney, Det. Thomas Delaney, and PO Sean Delaney. A second request (Board Review 05) was thus submitted for all BWC footage recorded by these seven officers on May 31, 2020, between 11:00 PM and 11:55 PM. This second request also yielded negative results.

The investigation was unable to locate relevant footage from any other camera sources. No NYPD TARU cameras covered the immediate vicinity of Atlantic Avenue and 4<sup>th</sup> Avenue (Board Review 06). A Google Street-View canvass confirmed that the commercial establishments at the intersection were not equipped with cameras covering the median or crosswalk described by § 87(2)(b) (Board Review 07). And the investigation was unable to find any relevant civilian-recorded footage on the internet or within the records of the two other CCRB cases that occurred in proximity to the incident location (Board Review 22, see agency protest map). Furthermore, as previously stated, though § 87(2)(b) stated that he had video footage of this incident and of the subject officer, he failed to provide it to the CCRB.

### **NYPD Documents Reviewed**

The investigation obtained all seven officers’ color photographs, pedigree information, and memo books for May 31, 2020 (Board Review 08 - 14). Six of the seven officers did not resemble the described subject officer in any aspect: PO Robert Delaney (61<sup>st</sup> Precinct) is a tan-complexioned Hispanic male, 6’1” tall, with brown hair; PO Robert Delaney (75<sup>th</sup> Precinct) is a white male, approximately 5’11” tall, bald, without facial hair, and his original hair color is noted as blonde; Sgt. Peter Delaney is a white male, 5’10” tall, with brown hair, and no facial hair; Sgt. Jared Delaney is a white male, 5’9” tall, weighing 180 pounds, with brown hair, and no facial hair; Det. Michael Delaney is a white male, 5’10” tall, weighing 160 pounds, with brown hair, and no facial hair; and Det. Thomas Delaney is a white male, 6’4” tall, weighing 225 pounds, with grey hair and no facial hair. PO Sean Delaney was the only officer who resembled the description in some regard – he is a white male whose pedigree and photograph show him with a red mustache and beard (Board Review 10). However, PO Sean Delaney is 5’5” tall and 150 pounds, and thus did not match § 87(2)(b)’s description of the subject as 5’10” tall and 170 pounds.

As noted, none of the officers were assigned to the commands whose borders converge at or about the incident location – the 81<sup>st</sup>, 78<sup>th</sup> and 88<sup>th</sup> Precincts (Board Review 20). Additionally, none of the officers’ memo books reflected any protest-related assignments or activities in the vicinity of Fourth Avenue and Atlantic Avenue or the Barclays Center (Board Review 08-14). PO Robert

Delaney (61<sup>st</sup> Precinct) was not on duty on May 31 and June 1, 2020. PO Robert Delaney (75<sup>th</sup> Precinct) was assigned to sector patrol within the confines of the 75<sup>th</sup> Precinct, and responded to at least four different incidents after starting his tour at approximately 12:00 AM. Sgt. Jared Delaney's memo book shows him working from 4:00 PM on May 31<sup>st</sup> to about 2:00 AM on June 1, 2020; his only notation for the tour is an entry marking his end of tour, "Protest RDO OT." Sgt. Peter Delaney was assigned to the 41<sup>st</sup> Precinct stationhouse desk. Det. Michael Delaney was assigned to a Counter-Terrorism maritime detail. Lastly, PO Sean Delaney's memo book notes both May 31 and June 1, 2020 as his vacation days. The officers' assignments were corroborated by their commands' roll calls for Tour 3 on May 31<sup>st</sup> (Board Review 15).

Along with the other two CCRB cases proximate to this incident location, the investigation requested the individualized rosters for all details assigned to cover protest activity in the vicinity of Fourth Avenue and Atlantic Avenue. The documents provided by the NYPD, however, were frequently incomplete and unclear: the responses included no detail-specific maps or memoranda; many rosters did not include the geographical parameters of the assignment, such as street-by-street posts or zones; and others lacked the start and end times of the detail's tour (Board Review 16, 17). Nevertheless, in sum, none of the documents listed an officer with the last name "Delaney," and none showed any names similar to "Delaney" in spelling or phonetic sound.

Overall, the rosters showed that more than 25 details, each consisting of nine members including a supervising sergeant or lieutenant, were assigned to cover locations nearby or within a deployment radius of Fourth Avenue and Atlantic Avenue. When documented, the rosters showed specified posts at the Barclays Center, the Plaza Mall (presumably the Atlantic Terminal Plaza), the Best Buy complex, the Apple Store building, and various posts along Atlantic Avenue and Sixth Avenue. Additionally, there were four mobile teams operating in the area, referred to in their rosters as Atlantic Mobile, Tillary Mobile, Adams Mobile and Flatbush Mobile. Atlantic Mobile's roster specified its area assignment as "Barclays, 4th Ave. to Tillary St." The other mobile details were assigned to surrounding areas – between Gold Street and Tillary Street, Cadman Plaza and Adam Street, and Flatbush Avenue.

The Atlantic Mobile roster is the only documentary reference to any detail coverage at Fourth Avenue and Atlantic Avenue. As with all the other detail rosters, there is no documentation of any member of service named Delaney. Other documents obtained by the investigation, such as the finalized roll calls and resource recap logs (Board Review 15, 18), and event documentation for the location (Board Review 19), did not aid in officer identification.

### **Concurrent Investigations**

The investigation is not aware of any concurrent investigations by outside agencies.

### **Ranking Officers**

As noted above, the many details mobilized at or about the incident location were supervised by sergeants or lieutenants from commands across the boroughs, ranging from Public Service Areas to Transit Districts to over multiple precincts. None, however, were named "Delaney." Additionally, while the obtained roll calls show other high-ranking members of service on duty during the relevant time period, there was no documentation of any protest-assigned personnel higher than the rank of Lieutenant (Board Review 15, 16, 17).

Given the sheer number of officers in the area and given that § 87(2)(b) described no involvement – direct or otherwise – of any ranking officer besides the one he believed was a sergeant, the

investigation had no reasonable basis to identify ranking officers as present at the location.

### **Officers Interviewed**

Police Officer Sean Delaney, the officer who bore the closest physical resemblance to the subject officer described by § 87(2)(b) was interviewed. In his interview, Police Officer Sean Delaney stated that he was on vacation on both May 31 and June 1, 2020, a fact which is corroborated by his Memo Book entries, and that he was not the officer who § 87(2)(b) encountered during this incident (Board Review 21).

### **Allegation Recitation and Disposition**

**Allegation (A) Discourtesy – Word: An officer spoke discourteously to § 87(2)(b)**

**Allegation (B) Force – Physical Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 22).

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of December 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 22).
- According to the New York State Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 22).

Squad No.: 02

Investigator: /sprakash Inv. Santosh Prakash 12/17/20  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 12/18/2020  
Signature Print Title & Name Date